



**IN THE LABOUR COURT OF SOUTH AFRICA, DURBAN**

Not Reportable

**CASE NO : D1278/17**

In the matter between :-

**ARCHER DANIELS MIDLANDS SOUTH AFRICA**

**APPLICANT**

AND

**SHIVAN SONI**

**RESPONDENT**

**Heard: 24 June 2020. In Chambers**

**Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for handing- down is deemed to be 14h00 on 25 June 2020.**

**Summary: Unopposed Review Application**

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**JUDGMENT**

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GUSH J

- [1] This is an unopposed application in which the applicant applies for the award issued by the third respondent under case number KNDB 88947–15 dated 16

August 2017 to be reviewed and set aside and substituted with an arbitration award that the dismissal of the first respondent was substantively and procedurally fair.

- [2] The application is unopposed by the first respondent. The first respondent has filed a notice (by his attorneys indicating clearly that he is aware of the application) that he will abide by the decision of this court.
- [3] The arbitration took place over approximately six days during 2015 and 2016 and the record filed by the applicant of the transcripts of the disciplinary inquiry and the arbitration, the documentation of forensic report comprise some twenty volumes.
- [4] The first respondent was employed by the applicant is a senior rice trader and was responsible for the sales price. He worked together with a colleague, Ronald Jenkins, who would implement the sales procured by the first respondent on behalf of the applicant. The applicant is an important and seller of rice in large volumes.
- [5] The rice imported by the applicant was stored in a warehouse operated by a company called Carbon Black. The disciplinary inquiry, which led to the first respondent's dismissal, arose as a result of substantial volumes of rice being delivered to customers prior to payment being secured. The payment for the rice was never received which resulted in the respondent suffering a very substantial loss.
- [6] As a result of the loss the applicant commissioned a forensic investigation. As result of this investigation the applicant was charged with misconduct and dismissed. The forensic investigation had found that Jenkins too was responsible for the delivery without payment. Jenkins resigned prior to a disciplinary inquiry being conducted into his conduct.
- [7] I do not intend to repeat the six disciplinary charges leveled at the applicant. The charges are set out at pages 26 to 33 of the pleadings. It suffices to say that the essence of the misconduct related to an allegation that the first respondent had, contrary to the applicants regulations, orally authorized the

release of the rice. In addition this authority had been given to the warehouse prior to the sales contract be concluded.

- [8] The consequence of the misconduct was that the applicant had suffered an R8 million Rand loss.
- [9] It is common course that the first respondent not only did not participate fully in the disciplinary inquiry failed to cooperate with an with the forensic investigation. At the conclusion of the disciplinary inquiry the applicant was found guilty and dismissed.
- [10] Dissatisfied with his dismissal the first respondent referred a dispute to the third respondent went to the second respondent to arbitrate the dispute.
- [11] The applicant at the arbitration adduced the evidence of inter alia the forensic auditor and the managing director of Carbon Black, Anand Gounder, the company that owned the warehouse where the rice was stored.
- [12] The essence of the applicant's grounds of review relates to the rejection of the evidence given by Anand Gounder. Gounder's evidence was to the effect the first respondent had authorized the release of the consignments. The first respondent simply denies this.
- [13] The second respondent also dismissed the forensic report as hearsay and that it provided no assistance in deciding on whether the first respondent or Gounder should be believed. Gounder had also given evidence to the effect that in the past the first respondent had for administrative reasons orally authorized the release of consignments. This too the first respondent denied. The second respondent appears to disregard the evidence relating to the admission by the first respondent that he was aware of our authorizations being given for the release of stock. That being so it is startling that the second respondent elected to simply dismiss the evidence of Gounder in favour of the first respondent.
- [14] A further issue relating to the first respondent's alleged misconduct was the issue of stock levels. The second respondent concluded that the first

respondent had in fact provided carbon black with inaccurate records. Despite so concluding the second respondent was simply satisfied that the first respondent was not guilty of any misconduct “on this score”.

- [15] At the culmination of the arbitration, having concluded that the dismissal was substantively unfair (having concluded that it was not “procedurally unfair”) somewhat surprisingly awarded the applicant only a mere three months’ salary.
- [16] The second respondent’s rejection of Gounder’s evidence and the “opinion that the real culprit was Carbon Black” with regard to the inaccurate stock levels amounts to a reviewable irregularity.
- [17] In the absence of anything to the contrary and taking into account the record, the applicants founding and supplementary affidavit I am satisfied that the conclusion reached by the second respondent that the dismissal of the first respondent was unfair is reviewable and should be set aside.
- [18] I am satisfied that no purpose would be served by referring the matter back accordingly make the following order:
- a. the arbitration award issued by the third respondent is reviewed and set aside and substituted with an order that the dismissal of the first respondent was substantively and procedurally fair.

Sgd D H Gush  
D H Gush  
Judge of the Labour Court of  
South Africa